

1 THE HONORABLE THOMAS S. ZILLY
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SQUAXIN ISLAND TRIBE, ISLAND
ENTERPRISES, INC., SWINOMISH INDIAN
TRIBAL COMMUNITY, and SWINOMISH
DEVELOPMENT AUTHORITY,

12 Plaintiffs,

13 vs.

14 FRED STEPHENS, Director, Washington State
15 Department of Licensing,

16 Defendant.

Case No.: C03-3951Z

JUDGMENT AND PERMANENT INJUNCTION

17 This action came on for hearing before the Court, Honorable Thomas S. Zilly, United States
18 District Judge, presiding, and the issues having been heard and a decision having been rendered on
19 November 22, 2005, docket no. 129, it is hereby Ordered, Adjudged, and Decreed:

20 1) The Court grants judgment in favor of Plaintiffs on Count I of Plaintiffs' Second Amended
21 Complaint as to the State of Washington Motor Vehicle Excise Tax imposed by RCW 82.36, for
22 the reasons stated in the Court's Order dated November 22, 2005, docket no. 129.

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25 C03-3951Z

[PROPOSED] JUDGMENT AND PERMANENT
INJUNCTION – PAGE 1

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- 2) The Court dismisses as moot, without prejudice, Counts II and III of Plaintiffs' Second Amended Complaint.
- 3) The legal incidence of the State of Washington's motor vehicle fuel tax, RCW chapter 82.36, which became effective January 1, 1999, rests upon the retailer of those fuels.
- 4) As a matter of federal law, the State of Washington's motor vehicle fuel taxes may not be applied to motor vehicle fuels, delivered to, received by, or sold by any retail fuel station that is owned by an Indian tribe, tribal enterprise, or tribal member and that is located within the tribe's Indian Country.
- 5) Defendant is permanently enjoined from imposing or collecting motor vehicle fuels taxes, or otherwise seeking to enforce RCW chapter 82.36 with respect to motor vehicle fuels, delivered to, received by, or sold by Plaintiffs' retail fuel stations within their respective Indian Country.
- 6) Within 30 days, Defendant shall notify in writing all licensees under RCW chapter 82.36 that (a) motor vehicle fuel taxes may not be imposed upon, collected from, or passed on to Plaintiffs' retail fuel stations, and (b) with respect to motor vehicle fuels delivered to or received by Plaintiffs' retail fuel stations where a licensee does not impose upon, collect from, or pass on to Plaintiffs' retail fuel stations any motor vehicle fuel taxes, a licensee may seek refunds pursuant to RCW § 82.36.273 for taxes previously paid on those fuels. Defendant's notification shall include a copy of this Judgment.
- 7) Upon the issuance of any license under RCW chapter 82.36, Defendant shall provide to the licensee the notice required by this Judgment.

C03-3951Z

[PROPOSED] JUDGMENT AND PERMANENT
INJUNCTION – PAGE 2

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8) This Judgment is binding upon the Defendant, his successors, and their respective officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

Dated this 4th day of January, 2006.

Thomas S Zilly

Presented by:

KANJI & KATZEN, PLLC

SQUAXIN ISLAND LEGAL DEPARTMENT

s/ CORY J. ALBRIGHT

Cory J. Albright, WSBA # 31493

s/ by CORY J. ALBRIGHT per email
authorization

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C03-3951Z

[PROPOSED] JUDGMENT AND PERMANENT
INJUNCTION – PAGE 3

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3 s/ by CORY J. ALBRIGHT per email
4 authorization

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20 C03-3951Z

21 [PROPOSED] JUDGMENT AND PERMANENT
22 INJUNCTION – PAGE 4

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